IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.8.2006

CORAM:

THE HONOURABLE MR.JUSTICE M.THANIKACHALAM

SECOND APPEAL Nos.1089 AND 1090 OF 1994

SECOND APPEAL No.1089 OF 1994

V.Kanniammal ... Appellant/Plaintiff

Vs.

1.Anjalakshiammal (Died)
2.Jayalakshmi
3.Jegannathan
4.K.Amaravathi
5.D.Elangovan
6.D.Chandrasekaran
7.Kulasekaran
8.R.Prabhavathi
9.R.Srun Kumar
10.Anitha
11.N.Ashok Kumar
12.Yasoda ... Respondents/Defendants 1 & 2 and LRs of the 1st defendant

(Respondents 2 and 3 represented
by power of attorney
Ramabadran)

(Respondents 4 to 12 brought on
record as Legal Representatives
of the deceased 1st respondent
as per the order dated 21.7.2006
made in C.M.P.Nos.16625 & 16626/2005)

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SECOND APPEAL No.1090 OF 1994

1.V.Kanniammal
2.Vengu
3.Munusamy Naicker
4.Ganesan
5.Vedagiri
6.Narasimhan ... Appellants/Defendants 3 to 8

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Vs.

1.Anjalakshiammal (Died)
2.Jayalakshmi
3.Jegannathan
4.K.Amaravathi
5.D.Elangovan
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7.Kulasekaran
8.R.Prabhavathi
9.R.Srun Kumar
10.Anitha
11.N.Ashok Kumar
12.Yasoda ... Respondents/Plaintiff & Defendants 1 & 2 and LRs of the 1st defendant

(Respondents 2 and 3 represented by power of attorney Ramabadran)

(Respondents 4 to 12 brought on record as Legal Representatives of the deceased 1st respondent as per the order dated 21.7.2006 made in C.M.P.Nos.16625 & 16626/2005)

Second Appeals preferred under Section 100 of the CPC as against the common judgment and decrees dated 27.1.1994 respectively rendered in A.S.Nos.4 of 1993 and 3 of 1993 by the Additional Subordinate Judge, Chengalpattu thereby reversing the common judgment and decrees dated 30.9.1992 respectively rendered in O.S.Nos.74 of 1986 and 73 of 1986 by the District Munsif, Chengalpattu.

For appellants in both S.As. : Mr.T.V.Krishnamachari
For respondents: Mr.S.V.Jayaraman, S.C. for 1 and 4 to 12 : M/s.G.S.Selvatharasu
For R2 & R3 in both S.As. : No Appearance

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COMMON JUDGMENT

The third defendant in O.S.No.74 of 1986 and the defendants 3 to 8 in O.S.No.73 of 1986 on the file of the District Munsif, Chengalpattu, are the appellants.

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2. The parties are referred to, as per their ranking in O.S.Nos.73 and 74 of 1986.

3. The first respondent in both the appeals has filed O.S.No.73 of 1986 for declaration, that she is in possession and enjoyment of the suit property, in part performance of the contract, to purchase the property, as per the agreement dated 25.7.1981 and therefore, her possession should be protected and in this view, she sought for permanent injunction also.

4. The defendants 1 and 2, by names Jayalakshmi and Jagannathan, are the admitted owners of the suit property. The plaintiff claims, in both the suits, that the power of attorney agent of defendants 1 and 2 viz. Ramabadran had agreed to sell the suit property to the plaintiff on 25.7.1981, fixing the sale consideration at Rs.60 per cent and pursuant to the agreement, he had also received a sum of Rs.1,000/=, as advance. She has further contended that pursuant to the agreement, she was put in possession of the suit property on 25.7.1981 itself and from the said date onwards, she is cultivating the property, paying necessary kist and other taxes due to the authorities. According to the plaintiff, though she was ready and willing, to pay the balance of sale consideration and paid the balance to Ramabadran in November 1983, Ramabadran was evading the execution of the sale deed and it seems, the defendants 1 and 2 have also conveyed the properties to defendants 3 to 8. In view of the agreement subsisting in favour of the plaintiff, the third defendant and other defendants cannot be bona fide transferees, but they are attempting to dispossess the plaintiff, which should be prevented, not only declaring that the plaintiff's possession is pursuant to part performance, falling under Section 53-A of the Transfer of Property Act, but also granting permanent injunction, for which purpose, O.S.No.73 of 1986 has been filed.

5. On the same allegations or avements, O.S.No.74 of 1986 has been filed for specific performance of the contract, praying for a direction to the defendants to execute the sale deed, further alleging that the plaintiff was always ready and willing to perform her part of the contract, whereas the defendants 1 and 2 alone have failed to perform their part of the contract and in this view, she is entitled to a decree for specific performance.

6. Both the suits are opposed by the defendants, more or less on the same grounds, contending that there was no agreement dated 25.7.1981; that Ramabadran, who is the alleged power of attorney of the defendants 1 and 2, was not the power of attorney at the relevant point of time and therefore, he has no right to enter into an agreement with the plaintiff on behalf of the defendants 1 and 2, the owners of the suit property; that though Ramabadran had informed that the sale would be completed within three months, even after three months, no amount has been paid and therefore, the property was sold to Kanniyammal/the appellant for valuable consideration; that at no point of time, the plaintiff was put in

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possession of the property, pursuant to the alleged agreement dated 25.7.1981; that as per the alleged agreement dated 25.7.1981, the plaintiff was never ready and willing to perform her part of the contract and in these views, the plaintiff is neither entitled to a decree on the basis of Section 53-A of the Transfer of Property Act nor a decree for specific performance, as claimed in both the suits.

7. The trial Court, after framing necessary issues in both the cases, considering the common interest involved as well as the evidence required to decide the cases, by consent, took the cases for joint trial. During the course of the trial, on behalf of the plaintiff, including the plaintiff, four witnesses have been examined, seeking aid from three documents, which are sought to be nullified or eclipsed by the examination of two witnesses in addition to seeking aid from ten documents, by the defendants.

8. The learned District Munsif, Chengalpattu, while evaluating the above materials, came to the conclusion that on the date of the alleged agreement dated 25.7.1981, Ramabadran was not the power of attorney agent of the defendants 1 and 2 and therefore, he has no right to enter into an agreement on behalf of the owners viz. defendants 1 and 2; that even if there was any agreement, the same could not bind the defendants 1 and 2, the fact being, one of the defendants was a minor then; that the plaintiff was not put in possession of the property, pursuant to the agreement or she is not continuing in possession, pursuant to the agreement also; that assuming that there was some agreement, the plaintiff was not always ready and willing to perform her part of the contract; that the possession of the plaintiff, if any, should be construed only as a trespasser and such person is not entitled to injunction. Having arrived at the above said conclusion, unhesitatingly, the learned District Munsif, dismissed both the suits, without costs, as per the common judgment dated 30.9.1992, which was under challenge before the Additional Subordinate Judge, Chengalpattu in A.S.Nos.3 and 4 of 1993.

9. The learned Additional Subordinate Judge, forgetting the settled position of law, regarding the burden of proof, taking advantage of some averments in the written statement of the third defendant, came to the conclusion that the defendants 1 and 2 have agreed to sell the suit property in favour of the plaintiff, though there was no written agreement; that the plaintiff was in possession of the property, even prior to the agreement and continued to be in possession of the property, pursuant to the agreement and therefore, he is entitled to protection under Section 53-A of the Transfer of Property Act; that the defendants 1 and 2 having agreed to sell the property, at the rate of Rs.60/= per cent, have failed to execute the sale deed, though the plaintiff was ready and willing to perform her part of the contract. Thus concluding, finding fault with the trial Court, the learned Additional Subordinate Judge, allowed both the appeals, upsetting the well reasoned common judgment of the trial Court, thereby granting decrees in both the suits, as prayed

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for, thereby causing grievance to the defendants/appellants to come to this Court, as appellants in Second Appeal.

10. This Court, while admitting the above Second Appeals, had formulated the following common Substantial Questions of Law:

1. Whether the Court below has properly appreciated the scope and applicability of Sec.53-A of Transfer of Property Act on the facts and circumstances of the case, having held that Ex.A.1 is only a receipt and not an agreement?
2. Whether the suit filed in the year 1986 based on the receipt Ex.A.1 dated 25.7.1981 is not barred by limitation?
3. Whether the lower Appellate Court has properly cast the burden of proof on the question of readiness and willingness with reference to Sections 16 and 20 of the Specific Relief Act, 1963?
4. Whether the lower Appellate Court has properly applied the principles of law laid in (1976) I MLJ page 243, 1993-2-L.W. Page 84, when it has been found that the case of the plaintiff that she has paid the balance sale consideration of Rs.2,500/= has not been proved?

11. Heard Mr.T.V.Krishnamachari, learned counsel for the appellants in both the appeals and Mr.S.V.Jayaraman, the learned senior counsel for the respondents 1 and 4 to 12 in both the appeals.

12. Mr.T.V.Krishnamachari, the learned counsel appearing for the appellants would submit that admittedly, on the date of alleged agreement, Ramabadran was not the power of attorney of defendants 1 and 2, which was properly considered by the trial Court, whereas the same was not properly appreciated by the first appellate Court, and thus landed in an erroneous conclusion, as if there is a valid sale agreement and this finding should not be allowed to remain and it should be extinguished.

13. It is the further submission of the learned counsel for the appellants that when there is no written agreement between the plaintiff and the defendants 1 and 2, the original owners, and when it is also not specifically proved that pursuant to the written agreement, the plaintiff continued to be in possession of the property, the first appellate Court committed a blunder in applying the principles of Section 53-A of the Transfer of Property Act, not properly reading and understanding the Section, which should be erased. It is further submitted that even as per the pleading and even as per the evidence available on the side of the plaintiff, there is no material, worthy of acceptance, that the plaintiff was always ready and willing to perform her part of the contract, paying the balance of sale consideration and this being the admitted position or the position surfaced by evaluating the materials properly, which was properly considered by the trial Court and unfortunately, not properly evaluated by the first appellate Court and this finding should also go, upsetting the decree granted for specific performance. Lastly, it was the

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submission of the learned counsel for the appellants that the suit for specific performance is barred by limitation.

14. Elaborating the above points and urging some ancillary points also in support of the above main points, taking me through the pleadings, as well as the settled proposition of law, Mr.T.V.Krishnamachari urged that the first appellate Court has not properly appreciated the case, whereas all the findings more or less perverse in nature, not in accordance with law as well as with the evidence and therefore, both the appeals deserve to be allowed, upsetting the decrees and common judgment of the first appellate Court, restoring the decrees and common judgment of the trial Court.

15. Mr.S.V.Jayaraman, the learned senior counsel appearing for the respondents 1 and 4 to 12, would submit that even as per the averments available in the written statement of the defendants 1 and 2 as well as the fourth defendant, there is an admission regarding the sale agreement and therefore, it was proper on the part of the first appellate Court in coming to the conclusion that there was a valid agreement for sale. It was further urged that the evidence available on record also would go to show, that the plaintiff was always ready and willing to perform his part of the contract and in fact, performed her part of the contract also, which was properly appreciated by the first appellate Court, not warranting any interference by this Court, as far as granting the relief of specific performance.

16. The learned senior counsel very fairly, befitting his stature, has not supported the decree granted by the first appellate Court in O.S.No.73 of 1986 where declaration has been made, granting permanent injunction also, accepting the protection under Section 53-A of the Transfer of Property Act. In order to weigh and accept the rival contentions of the parties, we have to recapitulate certain facts, which are admitted, as well proved.

17. In both the suits, the subject matter is an extent of 50 cents in S.No.56, situated at Vandaloor village, Chengalpattu Taluk, out of an extent of 1.03 acres, within the stated boundaries. Admittedly, this property belonged to defendants 1 and 2, by names Jayalakshmi and Jagannathan, mother and the son, who are represented by power of attorney agent Ramabadran. At the time of filing of the suit, Ramabadran had valid power of attorney, as seen from Ex.B.10 dated 27.9.1984, which will not come to the aid of the plaintiff, to say that as a power of attorney agent, Ramabadran had entered into an agreement of sale with her on 25.7.1981, since the agreement alleged is dated 25.7.1981. Therefore, it is incumbent upon the plaintiff to prove that the land owners/defendants 1 and 2, on their own, or on behalf of them the power of attorney, had entered into a sale agreement with her and failure should result in the dismissal of both the suits. In this view, the crux of the matter is whether Ramabadran had the authority to enter into an agreement with the

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plaintiff, to sell the suit property, which admittedly belonged to defendants 1 and 2.

18. In the plaints, it is said that Ramabadran, on 25.7.1981, as power of attorney agent of defendants 1 and 2, agreed to sell the suit property to plaintiff, at Rs.60 per cent, received an advance of Rs.1,000/= from the plaintiff on 25.7.1981 itself and evidencing the same, he issued a letter dated 25.7.1981. If the above averments are taken, as such, since no other kind of agreement is pleaded, one should think that Ex.A.1, by itself, is not an agreement of sale, whereas it is a receipt, evidencing a prior agreement. The prior agreement, whether it is dated 25.7.1981 or prior to that, is not a written agreement and it is also not specifically pleaded, that it is an oral agreement also. Therefore, by reading both the plaints, in entirety, it is not known as to on which date there was an agreement between the plaintiff and Ramabadran as the power of attorney agent of defendants 1 and 2. Even assuming that the agreement was dated 25.7.1981, on that date, Ramabadran was not the power of attorney of defendants 1 and 2 and he was not recognised by defendants 1 and 2 as power of attorney agent to act on their behalf.

19. In Ex.A.1 also, we are unable to see any averments describing Ramabadran as the power agent of defendants 1 and 2. The first appellate Court had extracted Ex.A.1, at Para No.15 of its common judgment. From the recitals of this document, we are unable to see either the head or the tail, since this document is silent about the parties to the agreement. Someone has signed as Ramabadran, acknowledging receipt of a sum of Rs.1,000/= from Anjalakshi, where we find that the amount was paid as advance for the sale of 50 cents at the rate of Rs.60 per cent. This document does not reflect that this was executed by Ramabadran as power of attorney agent of defendants 1 and 2 or the amount was received on behalf of defendants 1 and 2, etc. We find, the document is silent about the handing over of possession, either prior to that date or on the date of the said document viz. 25.7.1981. Since the document is not certain about the terms of the contract, it should be described as inchoate document, not enforceable. Therefore, this document cannot be considered as an agreement entered into between the plaintiff and the defendants 1 and 2. Only after this document i.e. on 27.9.1984 alone, the defendants 1 and 2 have executed a power of attorney as adverted supra. This being the position, it is hard to believe and accept that Ramabadran acted on behalf of defendants 1 and 2 as power agent or he had the capacity and competency and right to enter into an agreement of sale on behalf of the owners of the property i.e. the defendants 1 and 2, with the plaintiff. In this view, by going through this document, it should be held unhesitatingly, as held by the trial Court correctly, that this is not an agreement of sale and it should follow further, this cannot be the basis for maintaining a suit under Section 53-A of the Transfer of Property Act or for maintaining the suit for specific performance.

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20. As rightly submitted by the learned counsel for the appellant, the oral evidence of P.W.1 is silent, and I should say it is not worthy of acceptance also, to say that Ramabadran had entered into the agreement on behalf of the defendants 1 and 2. P.W.1, in her deposition, though would assert, when she was examined in chief, that Ramabadran had the right to sell the property, on behalf of defendants 1 and 2, had exhibited her ignorance at the time of the cross-examination. If P.W.1 had parted with a sum of Rs.1,000/= elsewhere in 1981, she should have verified whether Ramabadran had the capacity and right to receive the amount, on behalf of defendants 1 and 2, and had the right to enter into an agreement of sale. But, P.W.1, would admit that she had not seen any document, further exposing her ignorance about the agreement also. It is not the case of the plaintiff, as seen in the plaint, that the negotiation completed by Ramabadran, whether in the capacity of power of agent or otherwise, was informed to defendants 1 and 2 and accepted by defendants 1 and 2 and therefore, even assuming that Ramabadran had no written power, by the conduct of defendants 1 and 2, the agreement should be held valid since defendants 1 and 2 had accepted the negotiation of Ramabadran.

21. P.W.1 would admit, that she had not seen Jayalakshmi and Jagannathan i.e. defendants 1 and 2 respectively. In fact, she would admit that Jagannathan was minor then. Therefore, it is evident, the alleged negotiation by Ramabadran, was not with the consent of defendants 1 and 2 and subsequently also, the negotiation was not informed to defendants 1 and 2, confirmed by them. Because of this reason alone, P.W.1 would state that she does not know, whether the agreement was written, further stating no agreement was shown to her. If under Ex.A.1, the plaintiff had paid any amount to Ramabadran, the remedy for the plaintiff is to recover that mount from Ramabadran and not to file a suit for specific performance or claim protection under Section 53-A of the Transfer of Property Act against the original owners that too, not impleading Ramabadran, the alleged power of attorney of defendants 1 and 2.

22. The trial Court, considering all the above facts, in my considered opinion, has rightly held, as seen from paragraphs 17 and 18 of the common judgment, that there was no sale agreement between the plaintiff and the defendants 1 and 2; that Ramabadran was not the power of attorney of defendants 1 and 2 and that the sale agreement, if any, entered into by Ramabadran with the plaintiff is not binding upon the defendants 1 and 2. But, unfortunately, without properly understanding the nature of the case and without properly analysing the case as well as the evidence, taking some averments available in the written statement of the third defendant, the first appellate Court, in my considered opinion, misdirected itself, has come to the conclusion as seen from paragraph No.18 of the common judgment that there was an agreement between the parties. Having come to this conclusion, it is not known, how Section 53-A of the Transfer of Property Act was invoked to protect the possession of the plaintiff, since Section 53-A of the Transfer of Property Act reads

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that 'the contract to transfer for consideration of any immovable property should be by writing, signed by the owner or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty.' In view of the finding reached by the first appellate Court, that there is no written agreement and when we do not have the materials, to ascertain with all certainty regarding the terms of the contract, which are to be enforced, even as per the findings of the appellate Court, the suit for declaration claiming benefits under Section 53-A of the Transfer of Property should have been dismissed. But unfortunately, taking perverse view, I should say so, the appeals were allowed by the first appellate Court, granting decrees, which should be upset by this Court.

23. The first appellate Court, for reaching the above said far-reaching conclusion, relied on the defence, as extracted in paragraph No.17 of the common judgment, which are available in the written statement also, as pointed out by the learned senior counsel Mr.S.V.Jayaraman, appearing for the plaintiff. It is the basic law and rudimentary principles of the Evidence Act also, that the plaintiff, who has come to the Court with assertion regarding certain facts alone has to prove the same, in order to succeed and generally, he is not entitled to fall back upon the defence for his entire success, unless the law mandates so, such as giving presumption in favour of the plaintiff, which are not admittedly available in this case. Therefore, ordinarily, taking advantage of some averments in the written statement alone, giving a decree that too a discretionary relief of specific performance in favour of the plaintiff, is not desirable, since in my view, that may be an infringement against the settled position of law, including violating all the basic principles of law also.

24. In support of the above law, my attention was drawn to a decision of this Court in AYYAKANNU GOUNDER vs. VIRUDHAMBAL AMMAL [(2005) 1 M.L.J. 14], wherein a learned single Judge of this Court, relying upon the previous decisions, has ruled that 'the plaintiff cannot pick holes in the defendant's case to establish his case', which principle has to be applied to the case in hand also. True, if there are pleadings in the plaint and if there is evidence on the side of the plaintiff, then, in support of the same, taking advantage of the defence is not barred and it should be accepted, since the defence is inconsonance with the plaintiff's case. Here, it is not so. Nowhere in the plaint, as indicated above, it is pleaded, that the sale agreement said to have been entered into by Ramabadran, on behalf of defendants 1 and 2, was intimated to them and they have accepted the same also. In the written statement of defendants 1 and 2, they have not agreed or admitted the alleged action of Ramabadran as their power of agent and in fact, they have denied, emphatically, that Ramabadran had any authority to enter into the agreement of sale with the plaintiff.

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25. In Paragraph No.4 of the written statement of defendants 1 and 2 filed in O.S.No.73 of 1986, it is said

> "Sri Ramabadran informed the plaintiff that he would pass on the information to defendants 1 and 2 and told the plaintiff that the defendants 1 and 2 agreed to the entire sale within three months. The plaintiff agreed to pay balance of price within three months and have the sale deed executed. Contrary to the undertaking given by the plaintiff, the plaintiff never showed any anxiety to finish the sale."

The above averments, though would disclose that the act of Ramabadran or his negotiation with the plaintiff, was known to defendants 1 and 2, it is not the case of defendants 1 and 2 that they have agreed and accepted the act of Ramabadran. If it had been said that Ramabadran informed about the transaction to them and they have also accepted the same, as I have already indicated, we can say that there was a concluded contract between the vendor and vendee, which is absent in this case. The entire reading of the written statement of the defendants 1 and 2 would suggest unquestionably, in my considered opinion, that the defendants 1 and 2, the owners of the property, have not accepted the alleged agreement and therefore, on the basis of the admission, accepting the case of the plaintiff, is beyond comprehension.

26. There might have been some negotiation by the plaintiff to purchase the property of defendants 1 and 2 through Ramabadran, which might have been known to the third defendant. In this view, the third defendant, has stated in Paragraph No.4 of her written statement as follows:

> "This defendant ascertained that the plaintiff and given up her endeavour to purchase the suit land and only thereafter, this defendant purchased the suit land. This defendant is a purchaser in good faith and value."

This was extracted by the first appellate Court also. Here also, the third defendant has not accepted the sale agreement or there was a concluded contract between the vendor and vendee. The endeavour of the plaintiff, to purchase the property, may be by negotiations and it need not necessarily be a concluded contract, as erroneously held by the first appellate Court. Therefore, the submission of the learned senior counsel, that the defendants 1 to 3 themselves have admitted about the sale agreement, is not acceptable to me, since there is no categorical admission on the part of the defendants 1 to 3 about the concluded contract between the plaintiff and Ramabadran as the power agent of defendants 1 and 2, that too, in the absence of power deed in his favour in the year 1981. Therefore, taking advantage of the averments in paragraph No.4 of the written statement of the third defendant, it is impossible to say that there was concluded contract and therefore, the

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same could be enforced. This aspect of the fact, as well as the law, were properly considered by the trial Court, whereas over-looked by the first appellate Court, side-tracking the issue.

27. The learned counsel for the appellant Mr.T.V.Krishnamachari, would submit that even assuming that there was a contract of sale, in the absence of proof regarding the readiness and willingness of the plaintiff, a decree granted for specific performance or a decree granted giving protection under Section 53-A of the Transfer of Property Act, cannot be sustained. This argument cannot be easily brushed aside. Section 16(c) of the Specific Relief Act, 1963 mandates the plaintiff to plead and proof that he has performed or he has always been ready and willing to perform the essential terms of the contract and the failure would lead to the irresistible conclusion that the relief of specific performance of a contract cannot be granted, as held by the Supreme Court in ANIGLASE YOHANNAN vs. RAMLATHA AND OTHERS (2005 (5) CTC 800) and H.P.PYAREJAN vs. DASAPPA (DEAD) BY LRS. AND OTHERS [(2006) 2 SCC 496].

28. As seen from Paragraph No.9 of the plaint, there are averments by the plaintiff, regarding readiness and willingness to perform her part of the contract. The entire sale consideration is Rs.2,000/= and even as per the case of the plaintiff, only Rs.1,000/= has been paid and therefore, the balance has to be paid. Paragraph No.8 of the plaint attempts to say the acts done by the plaintiff, regarding the part performance. In view of the unquestionable finding reached, that Ramabadran was not the power of attorney of the defendants 1 and 2, he has no competency to receive the balance of sale consideration and if at all only the defendants 1 and 2 had the right to receive the balance of sale consideration. Nowhere in the plaint, it is stated that the plaintiff had approached defendants 1 and 2, paid the balance of sale consideration or tendered the balance of sale consideration, etc. On the other hand, the plaint would read that when he approached Ramabadran and tendered balance of Rs.2,000/=, he said the amount may be paid to his Manager Ramachandran and accordingly, the amount was paid to Ramachandran, in November, 1983. It is not known why Ramabadran directed the plaintiff to pay the amount to Ramachandran, who, as P.W.3, would state that he had received the amount and paid the same, in turn, to Ramabadran. The evidence, given by P.W.3, appears to be illogical and unacceptable to me. Thus, it is made clear, the balance of sale consideration was not paid or even attempted to be paid to the owners of the land viz. Defendants 1 and 2. Nowhere in the plaint, it is stated that defendants 1 and 2 refused to execute the sale deed, when approached, whereas it is stated Ramabadran and Ramachandran were evading to execute the sale deed and there is nothing wrong in their evading, even assuming true, since they are not the owners and thus they are incompetent to execute the sale deed also. Therefore, the readiness and willingness pleaded and the attempt made to prove the payment of balance of sale consideration, through P.W.3, fails to satisfy the conscious of the Court and in this view, it should be held that there was slackness on the part of the plaintiff to perform her part of the contract and such being the

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position, even assuming that there was some contract, the same could not be enforced.

29. In view of the non-performance of the contract, with certainty, regarding the payment of Rs.2,000/=, in the plaint in O.S.No.74 of 1986, at paragraph No.9, it is stated that the plaintiff is willing to pay the sum of Rs.2,000/=, over again to defendants 1 and 2 and to prove these words as bona fide, no amount has been deposited. The plaintiff, as P.W.1, has not given acceptable evidence regarding the payment of balance of sale consideration also. In the plaint, it is said, she along with her son and another went to the house of Ramabadran and paid the amount. P.W.1 would state that the payment is known only to his son and the son, as P.W.2, would state that as per the directions of Ramabadran, Ramachandran had received the amount, not giving the date. No reason is assigned, why receipt was not obtained for the payment of Rs.2,000/=, though Ex.A.1 receipt was obtained for Rs.1,000/= that too, when the amount was said to have been paid to Ramabadran, the alleged power of attorney agent. In my assessment, the evidence of P.Ws.1 to 3, regarding the readiness and willingness of the plaintiff, is unacceptable and therefore, in the absence of the readiness and willingness, enforcing the agreement is not possible under law, even assuming that there was an agreement. In the light of the above discussion, the suit for specific performance must fail, which was properly appreciated by the trial Court, but improperly reversed by the first appellate Court. In the light of the above discussion, I conclude that the plaintiff has not proved any readiness and willingness, as contemplated under Section 16 of the Specific Relief Act and therefore, exercising the discretionary relief under Section 20 of the Specific Relief Act is not within the frame of the law. Hence, Substantial Questions of Law No.3 and 4 have to be answered against the plaintiff.

30. In view of my above findings, that there was no agreement between the plaintiff and defendants 1 and 2 for the sale of the suit property, the question of limitation, as framed under Substantial Question of Law No.(2), may not arise. Even assuming that there was an agreement, as rightly submitted by the learned counsel for the appellants, it should be held that the suit is barred by limitation. In O.S.No.74 of 1986, the dates of cause of action pleaded are 25.7.1981, November, 1983 and 12.2.1986. Under Article 54 of the Limitation Act, the starting point of limitation is the date of expiry of time for specific performance if fixed, if not, from the date of denial. Admittedly, from the date of 25.7.1981, the suit is not filed within three years and therefore, it is for the plaintiff to explain, how the suit is in time, which is the mandate of C.P.C., not complied with. P.W.1 would admit that within five years from the date of payment of Rs.2,000/=, the suit has been filed. She further admits, it was agreed between the parties that the sale should be completed within three months. If the above said evidence are accepted as correct, then, it should be held, the suit, filed in the year 1986, is barred by limitation. Even the evasion to execute the sale deed should be

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construed attracting Article 54 of the Limitation Act. In this view, if it is to be held, that there is a valid agreement, the suit is barred by limitation and this question, certainly, is an academic one, since I am of the considered opinion that there was no valid sale agreement between the parties. Hence Substantial Question No.(2) is answered accordingly.

31. O.S.No.73 of 1986 is for declaration that the plaintiff is in possession of the property, in part performance of the agreement dated 25.7.1981, as provided under Section 53-A of the Transfer of Property Act. In view of my findings supra, that there was no agreement much less a written agreement, claiming protection under Section 53-A of the Transfer of Property Act, either using the same as a sword or shield, would not arise for consideration and in this view, this suit must fail and that is why, the learned senior counsel for the first respondent/plaintiff has very fairly not urged any points in this case, to sustain the decree granted by the first appellate Court.

32. As held by the Supreme Court in PATEL NATWARLAL RUPJI vs. SHRI KONDH GROUP KHETI VISHYAK AND ANOTHER (1996-1-L.W. 368), 'Section 53-A of the Transfer of Property Act does not confer any title on the transferee but imposes a statutory bar on the transferor to seek possession from the transferee' and this being the position, in my considered opinion, the suit for declaration and consequential relief of injunction is not legally maintainable. In this case, the basic ingredients, required to claim protection under Section 53-A of the Transfer of Property Act viz. that the transferee viz. the plaintiff has taken possession of the property in part performance of the contract or she has been in possession of the property previously and continued to be in possession of the property in part performance of the contract, has not been made out, in addition proving the written contract as well as the readiness and willingness to perform her part of the contract. Therefore, the right to retain possession of the property, though the plaintiff was found to be in possession, should go and she should be treated as trespasser, not entitled to injunction.

33. Thus analysing the facts, as well as the law from proper perspective, applying the correct provisions of law, as settled by the Courts, the irresistible conclusions that should be drawn by this Court are:

i) that there was no agreement of sale between the plaintiff and the defendants 1 and 2
ii) that the plaintiff is not entitled to a decree for specific performance;
iii) that the plaintiff is not entitled to retain possession, claiming benefits under Section 53-A of the Transfer of Property Act and
iv) that the plaintiff is not entitled to the reliefs of declaration and injunction.

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In this view, both the appeals deserve to be accepted, thereby accepted, upsetting the first appellate Court's common judgment and decrees.

In the result, both the Second Appeals are allowed. The common judgment and decrees dated 27.1.1994 respectively rendered in A.S.Nos.4 of 1993 and 3 of 1993 by the Additional Subordinate Judge, Chengalpattu are set aside and the common judgment and decrees dated 30.9.1992 respectively rendered in O.S.Nos.74 of 1986 and 73 of 1986 by the District Munsif, Chengalpattu are restored.

But, in the facts and circumstances of the case, parties are directed to bear their costs throughout.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Rao

To

1.The Additional Subordinate Judge,
Chengalpattu.

2.The District Munsif,
Chengalpattu.

3. The Record Keeper,
V.R.Section,
High Court, Madras.

1 cc To Mr.T.V.Krishnamachari, Advocate, SR.34317.
1 cc To Mr.N.A.Nissar Ahmed, Advocate, SR.34741.

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S.A.Nos.1089 & 1090 of 1994.

NG(CO)
RVL 20.11.2006

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